

220220

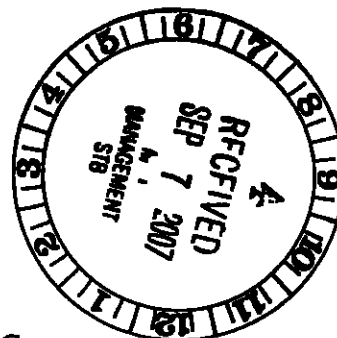


Michigan Association of Railroad Passengers, Inc.

P.O. Box 52148, Livonia, MI 48152-0148 • www.marp.org

September 6, 2007

The Honorable Vernon E. Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423



Re: STB Finance Docket No. 35063, Michigan Central Railway, LLC-
Acquisition and Operation Exemption – Lines of Norfolk Southern Railway
Company

Dear Secretary Williams:

Attached for filing are the original and ten copies of the comments of Michigan Association of Railroad Passengers.

Respectfully,

Michael Whims
Chairman
Michigan Association of Railroad Passengers

ENTERED
Office of Proceedings

SEP 07 2007

Part of
Public Record

Officers

Chairman- Michael Whims
V Chairman- Michael Frezell
Secretary- James Wallington
Treasurer- David Randall

Regional Chairpersons

Detroit Metro- John DeLora
East/Central Michigan- Richard Pekarck
Northern Michigan- Andrew Kent
Western Michigan- John Langdon

At-Large Executives

Clark Charnetski
Kay Chase
Kazuya Fujita
J R Valderas

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35063

**MICHIGAN CENTRAL RAILWAY, LLC
ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY**

**MICHIGAN ASSOCIATION OF RAILROAD PASSENGERS'
COMMENTS TO
PETITION TO REVOKE CLASS EXEMPTION**

Michael J. Whims
Chairman
Michigan Association of Railroad Passengers
1014 Iroquois Boulevard
Royal Oak, MI 48067
Tel (248) 892-4545
Fax (248) 546-6534

The Michigan Association of Railroad Passengers (MARP) is a non-profit corporation organized under the laws of the State of Michigan in 1973. Its purpose is to improve and expand passenger train services operating in the State of Michigan.

Pursuant to 49 USC §10502 and 49 CFR § 1121.1 *et seq.*, Michigan Central Railway has requested exemption from the provisions of 49 USC §10901 regarding its proposed acquisition of certain rail lines currently owned and operated by Norfolk Southern (NS).

In MARP's opinion, U.S. rail policy in 49 USC 10101(4) is clear that passenger train service is part of the Surface Transportation Board's (STB) mandate i.e., "To ensure the development and continuation of *a sound rail transportation system* with effective competition among rail carriers and with other modes, *to meet the needs of the public* and the national defense" (Emphasis added). The phrase "with effective competition" is inclusive in nature, not exclusive.

Further, the transaction is not of "limited scope" as specified in 49 USC §10501 (a) (2) (a). Instead, this transaction is clearly of national scope and importance because

1. It affects eight passenger trains per day.¹
2. There are far more passenger than freight trains on the Ypsilanti-Kalamazoo portion of the affected routes.²
3. The number of passengers involved is more than 500,000 per year, far greater than the stated number of MC's shippers on all of the affected lines.³
4. The Ypsilanti-Kalamazoo segment has been designated by the U.S. Secretary of Transportation as a future High Speed Rail Corridor.⁴
5. The state of Michigan has joined with the following eight states- 1) Illinois, 2) Indiana, 3) Iowa, 4) Minnesota, 5) Missouri, 6) Nebraska, 7) Ohio, and 8) North Dakota- to form the Midwest Interstate Passenger Rail Commission to foster development of high speed passenger train service on the Ypsilanti-Kalamazoo segment.⁵
6. The Michigan Department of Transportation and the U.S. Department of Transportation have spent \$102.8 million in Michigan to improve speed, safety and ride quality on the line between Pontiac and Chicago.⁶
7. The cities of Albion, Battle Creek, Dowagiac, Durand, Flint, Kalamazoo and LaPorte plus the Capital Area Rail Council (Lansing area) have built or purchased stations that serve as gateways to their communities from Amtrak trains operating over the affected lines.

¹ Amtrak timetable, Spring-Summer, 2007

² P. 16, Michigan Central Petition for Exemption to STB Document # 219765

³ <http://mdotwas1.mdot.state.mi.us/public/railstats/index.cfm?event=RidershipListByCorr>

⁴ <http://www.fra.dot.gov/us/content/203>

⁵ <http://www.miprc.org/>

⁶ MI-DOT, Intermodal Planning Administration

- 8 Plans have been publicly announced in Dearborn, Detroit and Troy, MI for station enhancements for handling expected increases in passenger traffic between Pontiac and Chicago
- 9 The line from Grand Rapids to Kalamazoo is part of a plan by MI-DOT's to restructure the *Pere Marquette* passenger train service by running the service over this segment⁷
- 10 The Detroit-Chicago line is part of an emergency evacuation route which has been agreed upon by the several states of the Midwest Interstate Passenger Rail Commission⁸

In spite of Watco's public pronouncements, MARP is very concerned with WATCO's financial and technical capacity to maintain passenger track and signals to the standards currently used by Amtrak. None of WATCO's properties involve passenger train dispatching, Centralized Traffic Control, or maintenance of track to Federal Railroad Administration Class 4 track standards.

MARP has no objection to WATCO being involved with the freight operation on these lines. Its role as an owner, however, raises many issues. MARP is deeply concerned that on its Palouse and Coulee City Railroad, according to Washington State DOT, "WATCO Inc. has indicated it does not have enough capital to address the backlog of repairs necessary to keep all the lines in operation"⁹. In addition, WATCO abandoned service on part of the railroad without prior notification. It did not resume service until after WS-DOT filed a complaint with the STB.

In MARP's opinion, MC's pledge to keep the line to current Amtrak standards is a promise which is not backed by enforceable guarantees. For that reason, MARP urges the following conditions to this transaction:

- The Surface Transportation Board should retain jurisdiction over this transaction for ten years.
- Amtrak should be a voting member of the MC Management Committee, and an *ex officio* member of any subordinate committees.
- Watco has publicly indicated that in order to maintain a smooth transition, that NS will continue dispatching for 6-12 months. MARP feels this is reasonable, but due to the predominance of passenger movements over freight movements, Amtrak should assume Norfolk Southern's dispatching duties for all passenger and freight movements between Ypsilanti and Kalamazoo after the transition period.
- Amtrak runs more trains over the route by a two to one ratio, therefore Amtrak should be designated as the maintenance of way contractor. This will ensure that work will be done promptly and properly, since Amtrak has the greatest vested interest in high quality trackage, and has a maintenance of way base in Niles, MI.

⁷ http://michigan.gov/documents/mdot/MDOT-MWRR1_Executive_Report_193254_7.pdf

⁸ http://www.miprc.org/portal/uploads/kliewer/MIPRC_rail_&_emergency_preparedness_report.pdf

⁹ WS-DOT website URL - www.wsdot.wa.gov/publications/foio/PalouseCoulee.pdf

- MC should be mandated to notify Amtrak and STB within one business day of any slow order that is imposed on tracks over which Amtrak operates, along with the expected date of remediation
- Watco / MC should be required to post a joint \$25,000,000 letter of credit for a period of 10 years, with the letter of credit callable by Amtrak on 20 days notice if any of these commitments is not completed in a timely manner, or if a slow order which was not previously agreed to by Amtrak is imposed on Amtrak trains as the result of inadequate maintenance
- MC should be required to produce inspection reports and certification to the satisfaction of Amtrak's Chief Engineer that the condition of each bridge on the Kalamazoo – Ypsilanti segment qualifies passenger trains to traverse each bridge at a speed of 79 mph (if located where alignment permits such speed)
- MC should be required to agree that each bridge on the Kalamazoo – Ypsilanti segment either qualifies for passenger train bridge traversal speeds of 90 or 110 mph (if located where alignment permits such speeds) or, if not, MC's disclosure at this time of MC's position regarding the scope of bridge modifications that will be required
- MC should be required to produce a detailed specification, including completion dates, of the timber and surfacing work and the signal work to be done by MC on the Kalamazoo – Ypsilanti segment during each year in its 5 year capital program, and the service disruptions, if any, that that work will create for Amtrak
- MC should be required to commit that its resurfacing work will not change the elevation of tracks at a station platform where the station platform already is or originally was at the 8 inch height above the top of rail, and in addition, to commit that at other stations track resurfacing work will be focused on adjusting the elevation of the tracks at stations so that the platform will be 8 inches above the top of rail, in compliance with Access Board requirements

Respectfully submitted,



Michael J. Whims
Chairman
Michigan Association of Railroad Passengers
1014 Iroquois Boulevard
Royal Oak, MI 48067
Tel. (248) 892-4545
Fax (248) 546-6534

I, Michael J. Whims, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed on September 6, 2007


Michael J. Whims

CERTIFICATE OF SERVICE

_____ This is to certify that a copy of the foregoing Michigan Association of Railroad Passengers' Reply to Petition to Revoke has been served this 6th day of September, 2007 via first-class, postage pre-paid mail upon the following:

Morell, Karl
Ball Janik Llp
1455 F Street Nw Suite 225
Washington, DC 20005

Mullins, William A
Baker & Miller Plc
2401 Pennsylvania Ave, Nw-Suite 300
Washington, DC 20037

Moreno, Jeffrey O
Thompson Hine Llp
1920 N Street, Nw, Suite 800
Washington, Dc 20036, DC 20036-1600

Ross, Harold A.
Brotherhood Of Locomotive Engineers And Trainmen
1370 Ontario Street, Mezzanine
Cleveland, OH 44113

Edelman, Richard S
O'donnell Schwartz & Anderson Pc
1900 L Street Nw Suite 800
Washington, DC 20036

Palombo, Carmine
Southeast Michigan Council Of Governments
525 Griswold, Suite 300
Detroit, MI 48226

G Paul Moates
Sidley Austin Llp
1501 K Street, N.W.
Washington, DC 20005

Donald H Smith
Sidley Austin Llp
1501 K Street, N.W.
Washington, DC 20005

Schauer, Honorable Mark
State Of Michigan
P. O. Box 30036, Capitol Building, Room S-105
Lansing, MI 48909-7536

Edwards, John V
Norfolk Southern Corp.
Three Commercial Place
Norfolk, VA 23510

Capon, Ross B
National Association Of Railroad Passengers
900 2Nd St Ne Suite 308
Washington, DC 20002

Gonzales, Honorable Lee
Michigan House Of Representatives
P. O. Box 30014
Lansing, MI 48909-7514

Pierce, Jr., Robert L.
Graphic Packaging International, Inc.
835 Franklin Court, Suite 1-A
Marietta, GA 30067


Michael J. Whims